

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

XOOM ENERGY, LLC and
XOOM ENERGY NEW YORK, LLC

Defendants.

Case No. 18 Civ. 2949 (ARR) (RER)

**PLAINTIFFS' NOTICE OF MOTION
FOR CLASS CERTIFICATION**

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 23 and Rule 7.1 of the Local Civil Rules for the United States District Courts for the Southern and Eastern Districts of New York, Plaintiffs Susanna and Boris Mirkin and the proposed Class (together, "Plaintiffs"), by their undersigned attorneys, will move the Court before the Honorable Judge Allyne R. Ross, at the United States District Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201, on such day and time as counsel may be heard, for an Order granting Plaintiffs' Motion for Class Certification.

In support of this Motion, Plaintiffs will rely on the accompanying Memorandum of Law in Support of their Motion for Class Certification and the accompanying Declaration of Plaintiffs' counsel Steven L. Wittels with annexed Exhibits, including the Expert Reports of energy economists Derya Eryilmaz, Ph.D. and Seabron Adamson.

As outlined in the accompanying Memorandum, Plaintiffs seek the following relief from the Court:

(1) Certifying the following class under Fed. R. Civ. P. 23(a) and 23(b)(3):

All New York XOOM residential or small commercial customers who were charged a variable rate for electricity or natural gas under the operative 2013 XOOM New York variable rate sales contract or its equivalent language at any time from January 1, 2013 through and including the date of judgment.

Excluded from the Class are the officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, and their legal representatives, heirs, successors or assigns and any entity in which they have or have had a controlling interest, all federal, state and local government entities and any judge, justice or judicial officer presiding over this action and the members of their immediate families and judicial staff.

- (2) Designating Named Plaintiffs Susanna Mirkin and Boris Mirkin as Class Representatives;
- (3) Appointing Wittels McInturff Palikovic as Lead Class Counsel;
- (4) Directing that notification of class action certification be made to the Class by mail, email, and/or any other means that is the best practicable notice, with said notice to be paid by Defendants; and
- (5) For such other relief as the Court deems just and proper.

Pursuant to the Revised Case Management Plan entered on October 27, 2022 (ECF No. 115-1), Defendants' response to this motion is due on or before January 20, 2023 and Plaintiffs' reply brief is due on or before February 17, 2023.

Dated: December 16, 2022
Armonk, New York

Respectfully submitted,

/s/ Steven L. Wittels
Steven L. Wittels

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, the foregoing was served via email on all counsel of record.

By: /s/ Steven L. Wittels
Steven L. Wittels